

of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a) of this section.

**(2) Conduct of suspension, termination, and debarment proceedings**

(A) If a contracting officer determines, in writing, that cause for suspension of payments, termination, or suspension or debarment exists, an appropriate action shall be initiated by a contracting officer of the agency, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures.

(B) The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and such other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual in such proceeding.

**(3) Effect of debarment**

Upon issuance of any final decision under this subsection requiring debarment of a contractor or individual, such contractor or individual shall be ineligible for award of any contract by any Federal agency, and for participation in any future procurement by any Federal agency, for a period specified in the decision, not to exceed 5 years.

(Pub. L. 100-690, title V, §5152, Nov. 18, 1988, 102 Stat. 4304; Pub. L. 103-355, title IV, §4104(d), title VIII, §8301(f), Oct. 13, 1994, 108 Stat. 3342, 3397; Pub. L. 104-106, div. D, title XLIII, §§4301(a)(3), 4321(i)(13), Feb. 10, 1996, 110 Stat. 656, 677.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-106, §4321(i)(13), substituted “(as defined in section 403(12) of this title)” for “as defined in section 403 of this title” in introductory provisions.

Pub. L. 104-106, §4301(a)(3)(A), substituted “agrees to” for “has certified to the contracting agency that it will” in introductory provisions.

Subsec. (a)(2). Pub. L. 104-106, §4301(a)(3)(B), substituted “individual agrees” for “contract includes a certification by the individual”.

Subsec. (b)(1). Pub. L. 104-106, §4301(a)(3)(C), redesignated subpar. (B) as (A), struck out “such certification by failing to carry out” after “contractor violates”, redesignated subpar. (C) as (B), and struck out former subpar. (A) which read as follows: “the contractor or individual has made a false certification under subsection (a) of this section;”.

1994—Subsec. (a)(1). Pub. L. 103-355 substituted “greater than the simplified acquisition threshold (as defined in section 403(11) of this title) by any Federal agency, other than a contract for the procurement of commercial items as defined in section 403 of this title,” for “of \$25,000 or more from any Federal agency” in introductory provisions.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

EFFECTIVE DATE

Section 5160 of Pub. L. 100-690 provided that: “Sections 5152 and 5153 [enacting this section and section 702 of this title] shall be effective 120 days after the date of the enactment of this subtitle [Nov. 18, 1988].”

SHORT TITLE

Section 5151 of Pub. L. 100-690 provided that: “This subtitle [subtitle D (§§5151-5160) of title V of Pub. L. 100-690, enacting this chapter] may be cited as the ‘Drug-Free Workplace Act of 1988’.”

CONSISTENCY OF REGULATIONS WITH INTERNATIONAL OBLIGATIONS OF UNITED STATES; EXTRATERRITORIAL APPLICATION

Section 4804 of Pub. L. 100-690 required that regulations promulgated by agency heads be consistent with international obligations of United States, prior to repeal by Pub. L. 103-447, title I, §103(b), Nov. 2, 1994, 108 Stat. 4693.

**§ 702. Drug-free workplace requirements for Federal grant recipients**

**(a) Drug-free workplace requirement**

**(1) Persons other than individuals**

No person, other than an individual, shall receive a grant from any Federal agency unless such person agrees to provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee’s policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment in such grant, the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the granting agency within 10 days after receiving notice of a conviction under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).

**(2) Individuals**

No Federal agency shall make a grant to any individual unless such individual agrees as a condition of such grant that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting any activity with such grant.

**(b) Suspension, termination, or debarment of grantee**

**(1) Grounds for suspension, termination, or debarment**

Each grant awarded by a Federal agency shall be subject to suspension of payments under the grant or termination of the grant, or both, and the grantee thereunder shall be subject to suspension or debarment, in accordance with the requirements of this section if the agency head of the granting agency or his official designee determines, in writing, that—

(A) the grantee violates the requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1) of this section; or

(B) such a number of employees of such grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a)(1) of this section.

**(2) Conduct of suspension, termination, and debarment proceedings**

A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding Executive order and any regulations promulgated to implement such law or Executive order.

**(3) Effect of debarment**

Upon issuance of any final decision under this subsection requiring debarment of a grantee, such grantee shall be ineligible for award of any grant from any Federal agency and for participation in any future grant from any Federal agency for a period specified in the decision, not to exceed 5 years.

(Pub. L. 100-690, title V, § 5153, Nov. 18, 1988, 102 Stat. 4306; Pub. L. 105-85, div. A, title VIII, § 809, Nov. 18, 1997, 111 Stat. 1838.)

REFERENCES IN TEXT

Executive Order 12549, referred to in subsec. (b)(2), is set out as a note under section 6101 of Title 31, Money and Finance.

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105-85, § 809(1)(A), substituted “agrees to” for “has certified to the granting agency that it will” in introductory provisions.

Subsec. (a)(2). Pub. L. 105-85, § 809(1)(B), substituted “agrees” for “certifies to the agency”.

Subsec. (b)(1)(A). Pub. L. 105-85, § 809(2)(C), struck out “such certification by failing to carry out” after “violates”.

Pub. L. 105-85, § 809(2)(A), (B), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: “the grantee has made a false certification under subsection (a) of this section;”.

Subsec. (b)(1)(B), (C). Pub. L. 105-85, § 809(2)(B), redesignated subpars. (B) and (C) as (A) and (B), respectively.

EFFECTIVE DATE

Section effective 120 days after Nov. 18, 1988, see section 5160 of Pub. L. 100-690, set out as a note under section 701 of this title.

**§ 703. Employee sanctions and remedies**

A grantee or contractor shall, within 30 days after receiving notice from an employee of a conviction pursuant to section 701(a)(1)(D)(ii) or 702(a)(1)(D)(ii) of this title—

(1) take appropriate personnel action against such employee up to and including termination; or

(2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(Pub. L. 100-690, title V, § 5154, Nov. 18, 1988, 102 Stat. 4307.)

**§ 704. Waiver**

**(a) In general**

A termination, suspension of payments, or suspension or debarment under this chapter may be waived by the head of an agency with respect to a particular contract or grant if—

(1) in the case of a waiver with respect to a contract, the head of the agency determines under section 701(b)(1) of this title, after the issuance of a final determination under such section, that suspension of payments, or termination of the contract, or suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract, as the case may be, would severely disrupt the operation of such agency to the detriment of the Federal Government or the general public; or

(2) in the case of a waiver with respect to a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

**(b) Exclusive authority**

The authority of the head of an agency under this section to waive a termination, suspension, or debarment shall not be delegated.

(Pub. L. 100-690, title V, § 5155, Nov. 18, 1988, 102 Stat. 4307.)

**§ 705. Regulations**

Not later than 90 days after November 18, 1988, the governmentwide regulations governing actions under this chapter shall be issued pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

(Pub. L. 100-690, title V, § 5156, Nov. 18, 1988, 102 Stat. 4308.)

REFERENCES IN TEXT

The Office of Federal Procurement Policy Act, referred to in text, is Pub. L. 93-400, Aug. 30, 1974, 88 Stat.